

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MANUEL JIMENEZ-VALDEZ,
Plaintiff,

v.

TORIANO HUDSON, BEVERLY
WALTON,
Defendants.

Case No. 21-13046

Linda V. Parker
United States District Judge

Curtis Ivy, Jr.
United States Magistrate Judge

**ORDER REGARDING MOTIONS TO DISMISS AND PLAINTIFF'S
MOTION TO AMEND WITNESS LIST**

This matter is before the Court on two pending motions, Plaintiff's failure to file his amended complaint, and Plaintiff's motion to amend his witness list.

Defendant Hudson moved to dismiss the complaint on May 5, 2023. Plaintiff's response to that motion was due June 22, 2023. No response has been filed. Plaintiff's motion to amend his complaint to add exhibits was granted; he was ordered to file his amended complaint by June 9, 2023. He did not file the amended complaint. On June 5, 2023, Plaintiff moved to file an amended witness list. (ECF No. 40). On July 26, 2023, Defendant Walton moved to dismiss the complaint. (ECF No. 43).

Plaintiff's failure to file his amended complaint before June 9, 2023, forecloses his ability to do so at this point. This case will proceed on his original complaint.

Plaintiff's failure to respond to Hudson's motion to dismiss would ordinarily subject him to an Order to Show Cause for his failure. But since Walton recently filed a motion to dismiss, the Court will give Plaintiff a deadline by which to respond to both Hudson's and Walton's motions to dismiss. His response to both motions is due **on or before September 8, 2023. Failure to timely respond to both motions could result in sanctions, including a recommendation that the motion(s) left without a response be granted or that the case be dismissed for failure to prosecute under Fed. R. Civ. P. 41(b).** The Court notes that, although both motions are titled "motion to dismiss," they include a request for relief under Rule 56, for summary judgment. In his responses, Plaintiff should address whether he states a viable claim to relief under Fed. R. Civ. P. 12(b)(6), and whether there are issues of material fact that would preclude judgment for the defendants under Fed. R. Civ. P. 56.

Plaintiff's motion to amend his witness list is a request to amend the scheduling order, which Fed. R. Civ. P. 16(b) governs. The scheduling order can be modified on a showing of good cause. Good cause is met by determining the moving party's diligence in attempting to meet the scheduling order and whether the opposing party will suffer prejudice by amending the scheduling order. *Leary v. Daeschner*, 349 F.3d 888, 906 (6th Cir. 2003). In support of his motion, he states that he did not know the names of the medical provider witnesses until he

read his medical records in May 2023. He now knows their names, and wishes to add them to his witness list. He has shown good cause to allow the amendment of the witness list, so his motion is **GRANTED**. He must file the amended witness list **on or before August 25, 2023**.

The Court will address Hudson's motion to compel after a ruling on the pending dispositive motions.

IT IS SO ORDERED.

The parties to this action may object to and seek review of this Order, but are required to file any objections within 14 days of service as provided for in Federal Rule of Civil Procedure 72(a) and Local Rule 72.1(d). A party may not assign as error any defect in this Order to which timely objection was not made. Fed. R. Civ. P. 72(a). Any objections are required to specify the part of the Order to which the party objects and state the basis of the objection. When an objection is filed to a magistrate judge's ruling on a non-dispositive motion, the ruling remains in full force and effect unless and until it is stayed by the magistrate judge or a district judge. E.D. Mich. Local Rule 72.2.

Date: July 31, 2023.

s/Curtis Ivy, Jr.
Curtis Ivy, Jr.
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on July 31, 2023, by electronic means and/or ordinary mail.

s/Kristen MacKay

Case Manager

(810) 341-7850